

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

UNITED STATES OF AMERICA,

Defendant,

v.

CRIMINAL ACTION NO. 5:07-cr-00012

DARREN ROBINSON,

Defendant.

CERTIFICATION AND NOTICE

The Court hereby **CERTIFIES** that Defendant Darren Robinson's appeal of the above-styled case cannot be taken in good faith. The Court sets forth the following reasons in support, in accordance with Rule 24(a) of the Federal Rules of Appellate Procedure.

Rule 24(a) provides that a defendant who is found eligible for court-appointed counsel in the district court may proceed on appeal in forma pauperis without further authorization "unless the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed." Rules 3(a) and 4(b) permit a criminal defendant to file a notice of appeal of a sentence within ten days of the entry of the judgment. The deadlines set forth in these rules are jurisdictional and "noncompliance is fatal to an appeal." *Smith v. Barry*, 502 U.S. 244, 248 (1992).

Defendant's notice of appeal (Docket 70) indicates that he intends to appeal the criminal sentence imposed by this Court on the grounds that the sentence was in violation of the law and that he received ineffective assistance of counsel. Defendant was sentenced on October 2, 2007, to 168

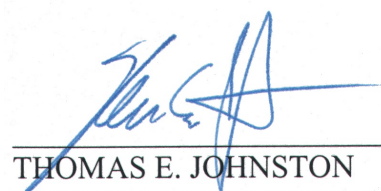
months imprisonment for distributing cocaine in violation of 21 U.S.C. § 841(a)(1). Defendant filed a notice of appeal that same day. The Court of Appeals for the Fourth Circuit affirmed Defendant's sentence in an unpublished opinion on June 3, 2008. *United States v. Robinson*, 280 F. App'x 292 (4th Cir. 2008). Defendant filed the current notice of appeal, his second, on July 10, 2009—a year after his first unsuccessful appeal and nearly two years after his sentence was imposed.

Defendant fully availed himself of the opportunity pursue a direct appeal of his sentence. This second attempt to appeal the sentence is untimely and improper. It cannot be taken in good faith. Defendant's only remaining recourse, if any, lies with a collateral attack of the sentence.

Defendant is advised that he may seek leave to proceed in forma pauperis from the United States Court of Appeals for the Fourth Circuit by filing a motion and financial affidavit within 30 days. Fed. R. App. P. 24(a)(5).

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: August 5, 2009

A handwritten signature in blue ink, appearing to read 'Th. Johnston', is written over a horizontal line.

THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE